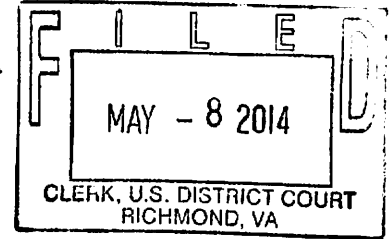


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



EDWARD LEE BOONE, JR.,

Petitioner,

v.

Civil Action No. 3:13CV621

HAROLD W. CLARKE,

Respondent.

MEMORANDUM OPINION

Edward Lee Boone, Jr., a Virginia prisoner, filed this action under 28 U.S.C. § 2254. On March 12, 2014, Respondent filed a Motion to Dismiss and an answer. (ECF Nos. 9-10.) On March 27, 2014, Boone filed a Motion to Dismiss Without Prejudice. (ECF No. 13.) Because Respondent already had filed an answer, Federal Rule of Civil Procedure 41(a)(2) governs Boone's Motion to Dismiss Without Prejudice. See Fed. R. Civ. P. 41(a)(2) ("Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."). A petitioner's "motion under Rule 41(a)(2) for dismissal without prejudice should not be denied absent substantial prejudice to the defendant." Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986) (citing Kenrose Mfg. Co. v. Fred Whitaker Co., 512 F.2d 890, 895 (4th Cir. 1972)). Respondent has failed to indicate he will suffer substantial prejudice if the Court

grant's Boone's motion. Accordingly, the Motion to Dismiss Without Prejudice (ECF No. 13) will be granted. The action will be dismissed without prejudice. The outstanding motions (ECF Nos. 6-8, 10) will be denied as moot. The Court will deny a certificate of appealability.

The Clerk is directed to send a copy of the Memorandum Opinion to Boone.

/s/ REP
Robert E. Payne
Senior United States District Judge

Date: May 6, 2014
Richmond, Virginia